

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	No. 3:22-CR-99-KAC-JEM
)	
BRIAN NOLBERT,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case is before the undersigned on the Motion to Review Appointment of Counsel by Defendant Brian Nolbert [Doc. 35]. The Court appointed Attorney Benjamin G. Sharp and the Federal Defender Services of Eastern Tennessee, Inc. (“FDS”) to represent Defendant Nolbert at his arraignment on May 24, 2023 [Doc. 28]. In the motion, counsel asserts that FDS has an actual conflict of interest in representing Defendant Nolbert.

The parties appeared for a hearing on this motion on June 12, 2023. Assistant United States Attorney Jeremy Dykes represented the Government. Attorney Benjamin Sharp appeared with Defendant Nolbert, who was also present. At the hearing, AUSA Dykes stated that the Government had no position on the motion.

The Court conducted a sealed, *ex parte* portion of the hearing to learn more about the nature and extent of the problems with the attorney-client relationship. Without going into the confidential nature of that discussion, the Court finds there is a conflict of interest. It would be appropriate to have new counsel appointed to represent Defendant through the conclusion of these proceedings.

Based upon good cause shown, Defendant Nolbert’s motion [**Doc. 35**] is **GRANTED**. *See Wilson v. Mintzes*, 761 F.2d 275, 280 (6th Cir. 1985) (requiring defendant to show good cause for

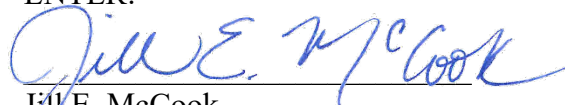
the substitution of counsel). Attorney Sharp and the FDS are relieved as counsel of record for Defendant Nolbert and Attorney Sharp is **DIRECTED** to provide new counsel with discovery and the information from Defendant's file. The Court recognizes the need for the Defendant to be represented continuously by counsel. Attorney Michael B. Menefee was present at the hearing and agreed to accept representation of Defendant. The Court **SUBSTITUTES** and **APPOINTS** Mr. Menefee under the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A, as counsel of record for Defendant Nolbert.

Accordingly, it is **ORDERED**:

- (1) the Motion to Review Appointment of Counsel by Defendant Brian Nolbert [**Doc. 35**] is **GRANTED**;
- (2) Attorney Benjamin Sharp and the FDS are **RELIEVED** of their representation of Defendant Nolbert;
- (3) Attorney Sharp is **DIRECTED** to provide new counsel with the discovery and information from Defendant's file; and
- (4) Attorney Michael B. Menefee is **SUBSTITUTED** and **APPOINTED** as Defendant Nolbert's counsel of record under the CJA.

IT IS SO ORDERED.

ENTER:



Jill E. McCook

United States Magistrate Judge